

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-864675 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Essie Paul

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1524

Essie Paul

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 July 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months on nine months' probation upon finding her guilty of misconduct. The specification found proved alleges that while serving as a stewardess on board the United States SS ARGENTINA under authority of the document above described, on 13 May 1965, Appellant wrongfully created a disturbance.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several eyewitnesses to the incident. The only defense witness was not present when the alleged offense occurred.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner entered the order of suspension mentioned above.

FINDINGS OF FACT

On 13 May 1965, Appellant was serving as a stewardess on board the United States SS ARGENTINA and acting under authority of her document while the ship was at sea.

Since shortly before midnight on 12 May, three waitresses had been sitting at a table in the women employee's lounge having a drink (alcoholic), and talking and laughing fairly loudly before retiring. They had been working until some time after 2300. The lounge was adjacent to the women employee's sleeping quarters.

About 0030 on 13 May, Appellant rushed into the lounge in a very angry and excited condition. She was wearing a dressing gown. Appellant screamed at the three waitresses, using profane language and ordering them to get out of the lounge. Suddenly, while the

other three women still seated at the table, Appellant turned the table over on its side. The contents went on the other women and on the deck.

By then, a small crowd had gathered. Someone called the bridge and an officer came to the lounge.

Appellant's prior record consists of an admonition in 1958 for an altercation with another member of the crew of the SS AMERICA.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that it was error for the Examiner to find the Appellant wrongfully created a disturbance in the lounge because:

1. The specification alleges a disturbance "by a verbal altercation" with the three waitresses, but the Examiner's finding is based on evidence that Appellant overturned a table. This evidence should not have been considered in determining whether the specification was proved.

2. The disturbance in the lounge already existed, when Appellant entered, due to the unduly loud manner in which the three waitresses were laughing and talking. Appellant's conduct was not unreasonable under the circumstances especially since she had complained previously about parties in the lounge after midnight.

APPEARANCE: Abraham E. Freedman of New York City and Philadelphia by Stanley B. Gruber, Esquire, on Counsel.

OPINION

As contended by Appellant, the specification alleges that Appellant wrongfully created a disturbance "by a verbal altercation" with the three waitresses. However, it is my opinion that this wording does not preclude consideration of the evidence that Appellant overturned the table since the proof in administrative proceedings is not limited to the allegations in the pleadings, provided there has been actual notice of the issues involved so that there is ample opportunity to introduce evidence. Kuhn v. C.A.B., 183 F. 2d 839 (D.C. Cir. 1950). The latter case decided that it was proper to base the suspension of a pilot's license, in part, on his failure to maintain a proper lookout, after thorough examination of the lookout issue, even though this issue was not pleaded as a cause of the alleged carelessness of the pilot.

In the present case, there was repeated testimony that Appellant upset the table in the lounge. Since there was no element of surprise which precluded Appellant from introducing evidence on the issue, it was proper for the Examiner to consider this as well as other factors in deciding whether or not Appellant created a disturbance.

I also agree with the Examiner's conclusion that Appellant was guilty of wrongfully creating a disturbance. Despite the fact that the talking and laughter in the lounge bothered Appellant and she had previously complained about parties late at night, Appellant certainly was not justified in acting as she did. They were not having a party in the lounge. The three waitresses were relaxing after work prior to retiring and the only evidence that this resulted in other than normal conditions is that they were talking and laughing "fairly" loudly. (R.53). Apparently, nobody except Appellant was bothered.

On the other hand, when Appellant rushed into the lounge screaming at the waitresses and then upset the table without making any attempt to reason with them, the volume of the noise was so great that a crowd gathered and the bridge was notified. Such violent conduct is clearly a breach of the order and discipline required on shipboard.

The order of the Examiner dated at New York, New York, on 7 July 1965, is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 4th day of November 1965.

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